

**EXPLANATORY MEMORANDUM TO**  
**THE ENVIRONMENTAL PERMITTING (ENGLAND AND WALES) (AMENDMENT)**  
**(No. 3) REGULATIONS 2015**

**2015 No. 1756**

**1.** This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs (Defra) and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 The instrument amends the Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675) (“the 2010 Regulations”) to give the regulators (the Environment Agency in relation to England, the Natural Resources Body for Wales in relation to Wales and local authorities in both countries) more robust powers to tackle illegal operators. It amends existing powers to suspend environmental permits, to seek an injunction in the High Court and to remove a risk of serious pollution.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

**4. Legislative Context**

4.1 The amendments in this instrument are part of a domestic package of measures made in the context of relevant EU legislation (in particular Directive 2008/98/EC of the European Parliament and of the Council on waste (OJ No L 312, 22.11.2008, p 3). It is intended that further amendments as part of the same package will be made in 2016.

**5. Territorial Extent and Application**

5.1 This instrument applies to England and Wales.

**6. European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

**7. Policy background**

- What is being done and why

7.1 Illegal operators in the waste management industry pollute the environment, endanger human health and show disregard for local residents. Their flouting of the regulations ranges from unsightly, often dangerous fly-tipping to mounds of rubbish sometimes containing tens of thousands of tons that can catch fire, pollute water, provide a breeding ground for rats and flies and give off smells that make life extremely unpleasant for those living nearby. Those responsible can leave authorities and landowners/ landlords to clear up the mess and deal with the consequences.

7.2 In addition, pollution incidents from persistent poor management of permitted waste operations and inadequate storage arrangements impact on the quality of air, water and land. Defra and the Welsh Government have seen a number of major waste fire incidents at permitted waste sites in England and Wales. While the total number of incidents may not have grown, their impact has increased, from the large amounts of smoke and fumes and water from fire-fighting.

7.3 The reputable waste management industry provides a key service to the UK economy. Both Governments recognise that tackling waste crime and persistent poor performance matters strongly to legitimate businesses, which are being undercut by criminals and need the confidence to invest. The reputable industry estimates the cost of waste crime to the UK economy at £568 million a year. The companies in the waste industry that operate to the highest standards need support from government and the consultation on these amendments was strongly in favour of them. It is therefore considered essential to take effective action against the small minority of rogue operators who are undermining and undercutting the law-abiding majority.

7.4 Defra and the Welsh Government are working with the regulators to take tougher and speedier action against illegal operators using existing powers. Both Governments also want to strengthen the regulators' powers to enforce effectively and provide them with more flexibility to take the most appropriate action. The amendments contained in this instrument are intended to support this objective.

7.5 The amendments do the following:

- enable the regulators to suspend an environmental permit where an operator has breached their permit and there is a resulting risk of pollution;
- enable the regulators to specify in a suspension notice the steps that must be taken by the operator to remedy the breach of a permit and remove the risk of pollution; and that the operator must erect signage which informs the public about waste that cannot be brought onto the facility;
- remove a precondition for the regulators to make an application to the High Court for an injunction to enforce compliance with an enforcement or other specified notice;
- enable the regulators to take steps to remove a risk of serious pollution, regardless of whether the facility affected is regulated under a permit.

7.6 Although the focus of Defra and the Welsh Government is on the regulation of waste operations, the amendments to legislation in this instrument apply to other activities regulated under the environmental permitting regime. It would not make sense to subject waste operations to a different enforcement regime from other industries regulated under the same system and legislation.

- Consolidation

7.7 The 2010 Regulations have been amended a dozen times since they were made. Defra and the Welsh Government are intending to consolidate them in late 2016.

## **8. Consultation outcome**

8.1 The proposed amendments to the 2010 Regulations were the subject of public consultation for 10 weeks between 26th February and 6th May 2015.

8.2 There were 89 responses to Part 1 of the consultation document which sought views on the proposed regulatory amendments set out in the instrument. There were 26 responses from local authorities; 21 from individual companies; 15 from trade associations; 8 from organisations categorised as “Other Public Bodies” (this includes various fire and rescue services and local authority representative organisations); and 6 from private individuals, 5 from professional bodies, 5 from consultancies and 3 from non-governmental organisations (NGOs).

8.3 Of the 89 responses received, 78 were from organisations and individuals based in England and 11 were from organisations and individuals based in Wales.

8.4 Eighty-three percent of respondents supported the proposal to widen the power of suspension; 90% of respondents supported the proposal to enable the regulators to specify steps to remedy the cause of pollution and require operators to erect signage indicating waste that cannot be accepted at the site; 95% of respondents supported the proposal to widen the power of the regulators to remove the risk of serious pollution; and 89% of respondents supported the proposal to enable the regulators to make an application to the High Court more readily by removing the current precondition.

8.5 The summary of responses to the consultation and the Government response is available at:

<https://www.gov.uk/government/consultations/waste-crime-improving-enforcement-powers-to-reduce-persistent-non-compliance-at-waste-handling-sites>

## **9. Guidance**

9.1 A suite of guidance from Defra and the Welsh Government on the 2010 Regulations is available at:

<https://www.gov.uk/government/publications/environmental-permitting-guidance-core-guidance--2>

9.2 The above guidance will be revised to reflect the amended legislation.

## **10. Impact**

10.1 There are no expected impacts on businesses, charities or voluntary bodies that are in compliance with the conditions of their environmental permits. Only operators who are in breach of their environmental permits will be affected by the proposed changes to the power of suspension and the power to make an application to the High Court. It is likely (though not legally necessary) that warnings will have been given to an operator prior to exercise of these powers. The proposed change to the power to remove a risk of serious pollution is also linked to the commission of an offence. All the changes in the instrument will only affect those who are operating illegally.

10.2 Defra will carry out an assessment of impacts on business as required under the Business Impact Target (as defined in the Small Business, Enterprise and Employment Act 2015).

10.3 The amendments are targeted at those who exhibit entrenched and persistent poor compliance with their permits. These operators represent a small percentage of permitted operations. Defra and the Welsh Government do not consider that there is likely to be a significant increase in the need for the regulators to exercise the wider power of suspension or the wider power to remedy pollution. It is estimated that the proposed change to the power to make an application to the High Court will result in a small increase in the number of proceedings which the regulators commence in the High Court.

10.4 The impact on the public sector is that the regulators will have their powers made more robust and flexible, allowing them to consider the appropriate response in all the circumstances of each case. In the short term there may be increased costs incurred as a result. However, as these powers will assist the regulators in taking speedier and tougher enforcement action, it is anticipated that the number of cases where the public sector incurs substantial costs from the clearance of polluting sites should reduce.

## **11. Regulating small business**

11.1 The legislation applies to small business. The consultation document was sent to businesses and business organisations, including those that represent small business. The impact on small firms is expected to be beneficial as the regulators will have more effective powers to enforce against illegal waste operators, who often unfairly undercut legitimate businesses.

## **12. Monitoring & review**

12.1 Defra, the Welsh Government and the regulators will monitor the effectiveness of these measures.

12.2 The 2010 Regulations contain a review provision in regulation 110. In accordance with this provision, the review is to take place in 2017. However, an extension of the review date is currently the subject of a consultation by Defra.

### **13. Contact**

Patrick McKell at Defra, Tel: 020 7238 4407 or email: [patrick.mckell@defra.gsi.gov.uk](mailto:patrick.mckell@defra.gsi.gov.uk) can answer any queries regarding the instrument.